

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: :
: Group Art Unit: 3616
Jeffrey Duncan WATTERS :
: Examiner: Gooden Jr., Barry J.
Appln. No.: 10/822,443 :
: Confirmation No.: 1433
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P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Sir:

In response to the final Office Action dated October 14, 2008, finally rejecting pending claims 11-13, 15-21 and 34-38, Appellant respectfully requests that the Board of Patent Appeals and Interferences reconsider and withdraw the rejections of record, and allow the pending claims, which are attached hereto.

REAL PARTY IN INTEREST

The Appellant, Jeffrey Duncan Watters, is the Applicant in the above-identified patent application.

RELATED APPEALS AND INTERFERENCES

The Appellant and the Appellant's legal representative are not aware of any other appeals or interferences which will directly affect, be directly affected by, or have a bearing on the Board's decision in this Appeal.

STATUS OF CLAIMS

Claims 11-13, 15-21 and 34-38 are pending in the above-identified patent application. Claims 1-10, 14 and 22-33 stand cancelled without prejudice. Claims 11-13, 15-21 and 34-38 were finally rejected in the Office Action dated October 14, 2008.

The final rejection of claims 11-13, 15-21 and 34-38 is hereby appealed.

STATUS OF AMENDMENTS

Appellants after-final amendments dated December 15, 2008 were entered by the Examiner in the Advisory Action dated January 12, 2009. The Claims Appendix lists the claims as pending.

SUMMARY OF CLAIMED SUBJECT MATTER

The claimed invention, as set forth in claim 11, and as described and shown in the Specification and Figures 1-25 of the above-identified patent application, respectively, is directed to a vehicle configured to allow accessibility to the vehicle (See, e.g., paragraph [0036]). The vehicle comprises a chassis structure comprising an original chassis structure and an additional chassis structure mounted to the original chassis structure (See, e.g., paragraph [0018] and Figure 25). The vehicle also comprises a substitute rear suspension mounted to the chassis structure in place of an original rear suspension, the original rear suspension being a rear beam axle suspension, the substitute rear suspension being an independent rear trailing arm suspension having independent rear trailing arm suspension components mounted to opposite sides of the chassis structure (See, e.g., paragraph [0072], lines 1-5 and Figure 5). The vehicle further comprises a floorpan supported by the chassis structure, the floorpan having a lowered portion supported directly by the additional chassis structure, the lowered portion being located directly between the independent rear trailing arm suspension components (See, e.g., paragraph

[0072], lines 5-9, and Figure 5). The lowered portion of the floorpan extends forwardly from a rear entrance of the vehicle (See, e.g., paragraph [0080], lines 2-4 in conjunction with Figures 7-11).

The claimed invention as set forth in dependent claim 12, is further directed to the vehicle described above with respect to independent claim 11, wherein the lowered portion of the floorpan of the vehicle extends forwardly from a rear entrance of the vehicle such that a wheelchair is able to be driven from the rear entrance to a driver's position to enable the occupant of the wheelchair to drive the vehicle from the wheelchair (See, e.g., paragraph [0080] in conjunction with Figures 7-11).

The claimed invention as set forth in dependent claim 13, is further directed to the vehicle described above with respect to independent claim 1, wherein the vehicle has wheelchair accessibility to the rear of the vehicle through a doorway at the rear of the vehicle (See, e.g., paragraph [0016]).

The claimed invention as set forth in dependent claim 15, is further directed to the vehicle described above with respect to independent claim 11, wherein the lowered portion of the floorpan of the vehicle is at least 760mm wide between rear wheels of the vehicle (See, e.g., paragraph [0020]).

The claimed invention as set forth in dependent claim 16,

is further directed to the vehicle described above with respect to dependent claim 15, wherein the lowered portion of the floorpan of the vehicle is at least 840mm wide between rear wheels of the vehicle (See, e.g., paragraph [0020]).

The claimed invention as set forth in dependent claim 17, is further directed to the vehicle described above with respect to independent claim 16, wherein the lowered portion of the floorpan of the vehicle is at least 850mm wide between rear wheels of the vehicle (See, e.g., paragraph [0020]).

The claimed invention as set forth in dependent claim 18, is further directed to the vehicle described above with respect to independent claim 11, wherein the lowered portion of the floorpan of the vehicle is substantially flat (See, e.g., paragraph [0020]).

The claimed invention as set forth in dependent claim 19, is further directed to the vehicle described above with respect to independent claim 11, wherein the vehicle is provided with a restraining belt, the restraining belt being anchored to the vehicle at either side of a space in which a wheelchair is to be located during driving of the vehicle, for restraining the occupant of the wheelchair (See, e.g., paragraph [0075], lines 1-7, in conjunction with Figures 12 and 13. In Figures 12 and 13, the restraining belt is shown as element 62).

The claimed invention as set forth in dependent claim 20, is further directed to the vehicle described above with respect to dependent claim 19, wherein the vehicle is provided with a restraining belt, which is anchored to the vehicle on one side of the space in which the wheelchair is to be located during driving of the vehicle, by way of a belt mounting frame fixed to the structure of the vehicle (See, e.g., paragraph [0075], lines 5-7, in conjunction with Figures 12 and 13. In Figures 12 and 13, the belt mounting frame is shown as element 64).

The claimed invention as set forth in dependent claim 21, is further directed to the vehicle described above with respect to independent claim 11. The vehicle is provided with locking restraints for locking a wheelchair in place during driving of the vehicle (See, e.g., paragraph [0075] in conjunction with element 46 of Figure 13).

The claimed invention, as set forth in dependent claim 34, is further directed to the vehicle described above with respect to independent claim 11, wherein the vehicle comprises a substitute rear suspension that includes an independent rear trailing arm suspension component comprising an elongated arm having a pivotal coupling at a front end thereof (See, e.g., paragraph [0068], lines 1-3, in conjunction with elements 10 (independent rear trailing arm suspension component), 12

(elongated arm), and 14 (bearing arrangement) of Figures 1, 2, and 3). The pivotal coupling enables the elongated arm to pivot with respect to the chassis structure of the vehicle about an axis substantially transverse to a longitudinal axis of the elongated arm (See, e.g., paragraphs [0021], [0039], and [0070] in conjunction with element 24 (inner core shaft) shown in Figure 3. The inner core shaft 24 forms the substantially transverse axis)). The substitute suspension also includes a wheel mounting for mounting a wheel of the vehicle longitudinally spaced from an axis of rotation of the elongated arm (See, e.g., paragraph [0068], lines 3-5, and paragraph [0070] in conjunction with Figure 4. The wheel mounting is illustrated as element 16 in Figure 4). The substitute rear suspension also includes a spring mounting for mounting a spring between the elongated arm and the chassis structure of the vehicle (See, e.g., paragraph [0068], lines 7-9 and paragraph [0070], lines 4-11, in conjunction with Figure 4). The substitute rear suspension also includes a shock absorber mounting for mounting a shock absorber between the elongated arm and the chassis structure of the vehicle (See, e.g., paragraph [0068], lines 5-6, and paragraph [0070] in conjunction with element 18 of Figures 1, 2, and 4).

The claimed invention, as set forth in dependent claim 35,

is further directed to the vehicle described above with respect to dependent claim 34, wherein the pivotal coupling of the elongated arm comprises a bearing arrangement at the front end of the elongated arm (See, e.g., paragraph [0068] lines 1-2, in conjunction with element 14 of Figures 1 and 2).

The claimed invention, as set forth in dependent claim 36, is further directed to the vehicle described above with respect to dependent claim 34, wherein the shock absorber mounting of the vehicle comprises a shock absorber mounting bracket at a rear end of the elongated arm (See, e.g., paragraph [0068], lines 5-6, in conjunction with element 18 of Figures 1 and 2).

The claimed invention, as set forth in dependent claim 37, is further directed to the vehicle described above with respect to dependent claim 34, wherein the spring of the vehicle comprises one of a coil spring and an air spring (See, e.g., paragraph [0071]). The spring mounting comprises a seating in an upper surface of the elongated arm for receiving a lower end of the one of the coil spring and the air spring (See, e.g., paragraph [0068], lines 7-9, in conjunction with element 20 of Figures 1 and 2).

The claimed invention, as set forth in dependent claim 38, is further directed to the vehicle described above with respect to dependent claim 34, wherein the wheel mounting of the vehicle

comprises a wheel mounting bracket mounted to an outer side of the elongated arm (See, e.g., paragraph [0068] lines 3-5 in conjunction with element 16 of Figures 1 and 2).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 11-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Nissan Serena ("Serena") in view of U.S. Patent 4,847,972 to Anderson et al. ("Anderson").

Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Serena in view of Anderson, and further in view of U.S. Patent 4,688,843 to Hall ("Hall").

Claims 34-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Serena in view of Anderson, and further in view of U.S. Patent 5,641,176 to Alatalo ("Alatalo").

ARGUMENT

The Appellant respectfully appeals the decision of the Examiner to finally reject claims 11-13, 15-21 and 34-38 of the above-identified patent application.

At the outset, Applicant would like to address the Examiner's Action's interpretation of the claims. The following two aspects of the Examiner's interpretation of the claims are

improper and have resulted in an inadequate and improper application of the cited art to the claimed recitations.

1. The Examiner interprets the claims as product-by-process claims, and thus concludes that positively recited elements are not germane to patentability.
2. The Examiner applies "admitted prior art" to the claims and alleges that this is proper because Applicant allegedly never traversed Official Notice. In fact, the Office Action never explicitly stated that Official Notice was being taken. And once the term "Official Notice" was actually used on the record, the Applicant traversed the Official Notice.

1. The Examiner's product-by-process interpretation error

Regarding point #1, independent claim 11 is not recited in product-by-process format. The claim recites "a vehicle configured to allow accessibility to the vehicle." The vehicle comprises a "chassis structure", a "substitute rear suspension", and a "floorpan." The claim is not recited in terms of a series of process steps, which is the nature of a product-by-process claim (see MPEP § 2113 and 2173.05(p)). Thus, the Office Action's interpretation of the claims as being product-by-process claims (and the resulting non-consideration of claimed elements) is improper.

The Examiner has interpreted the claims in this manner throughout the entirety of the prosecution. Indeed, the

Examiner states the following in the Advisory Action mailed January 12, 2009:

Applicant's assertion that structure not found in the final product carries patentable weight is inaccurate. Reference is made to MPEP 2113, PRODUCT-BY-PROCESS CLAIMS ARE NOT LIMITED TO THE MANIPULATIONS OF THE RECITED STEPS, ONLY THE STRUCTURE - the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art was made by a different process. Examiner maintains the only elements that pertain to patentability are those of the final structure and any intermediate elements that are original, substituted, subtracted or added are not germane to the issue of patentability unless they are in the final product.

The Examiner has made this and similar statements throughout the prosecution of this application. The Examiner uses this rationale to justify applying no weight to various positively recited elements of the claim. As a result, the claims include positively recited structural limitations that have never been addressed on the record by the Examiner. Applicant has directed arguments to these positively recited structural elements throughout the prosecution. These arguments have been ignored on the basis that they are to be given no weight. The rejection is therefore improper. Independent claim 11 is presented in its entirety below:

A vehicle configured to allow accessibility to the vehicle, the vehicle comprising:
a chassis structure comprising an original chassis structure and an additional

chassis structure mounted to the original chassis structure;

a substitute rear suspension mounted to the chassis structure in place of an original rear suspension, the original rear suspension being a rear beam axle suspension, the substitute rear suspension being an independent rear trailing arm suspension having independent rear trailing arm suspension components mounted to opposite sides of the chassis structure; and

a floorpan supported by the chassis structure, the floorpan having a lowered portion supported directly by the additional chassis structure, the lowered portion being located directly between the independent rear trailing arm suspension components and extending forwardly from a rear entrance of the vehicle.

All of the underlined portions shown in independent claim 11 above are positively recited, structural limitations. As can be seen from the above independent claim 11, the element of an "original rear suspension," is the only element of the claim that is not positively recited in a structural sense. The remaining limitations of the claim are positively recited in the structural sense. The Examiner, however, has not given these limitations any patentable weight at all. Thus, the Examiner's interpretation is improper and should be withdrawn.

2. The Examiner's "admitted prior art" error.

The Examiner makes the following statement at page 4 of the Final Office Action mailed October 14, 2008:

Applicant has not refuted that it is old and well known to provide means of ingress and egress for handicapped persons in various vehicles as such it is taken to be admitted prior art.

Applicant has not refuted that rearranging parts of an invention involves only routine skill in the art as such it is taken to be admitted prior art.

Applicant has not refuted that discovering the optimum or workable ranges involves only routine skill in the art as such it is taken to be admitted prior art.

The Examiner further states, in the Advisory Action mailed January 12, 2009, that:

The applicant has asserted that the admitted prior art is not admitted prior art. Examiner makes reference to MPEP 2144.03 C, "If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate."

The Final Office Action (mailed October 14, 2008) was the first time the term "Official Notice" was used by the Examiner. Applicant responded by expressly traversing the taking of Official Notice (see Response to Final Office Action dated December 15, 2008).

To the extent that it is proper to assume that any untraversed taking of Official Notice is admitted prior art, the taking of "Official Notice" should be sufficiently clear to put the Applicant on notice that he must speak now or forever hold

his peace. Unquestionably, the Examiner failed to do this. Thus, it is extremely prejudicial to the Applicant to not allow a traversal of an assumed point. Applicant therefore respectfully requests reversal on this point and respectfully submits that the pending rejection is improper as the Examiner has failed to supply evidence to support an assertion of Official Notice (See M.P.E.P. § 2144.03).

As a result of this improper assumption of "admitted prior art," the Examiner has failed to give full consideration to all the recitations in the claim and has further failed to fully articulate how the cited references allegedly apply to the full scope of the recited claims.

I. THE OBVIOUSNESS REJECTION OF CLAIMS 11-13 and 15-18

The Examiner asserts that claims 11-13 and 15-18 should be rejected under 35 U.S.C. § 103(a) as being unpatentable over Serena in view of Anderson. This rejection is hereby respectfully traversed.

Under 35 U.S.C. § 103, the Patent Office bears the burden of establishing a prima facie case of obviousness. In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). The Patent Office can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally

available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of references. Id.

The obviousness factors are: (1) determining the scope and content of the prior art; (2) ascertaining the differences between the claimed invention and the prior art; and (3) resolving the level of ordinary skill in the pertinent art; in addition, objective evidence, such as evidence of commercial success, long-felt but unsolved needs, failure of others, and unexpected results must be examined. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 U.S.P.Q. 459, 467 (1966) (factors affirmed by KSR Int'l Co. v. Teleflex, Inc., 550 U.S. __, __, 82 U.S.P.Q.2d 1385, 1391 (2007)). "Any obviousness rejection should include, either explicitly or implicitly in view of the prior art applied, an indication of the level of ordinary skill." MPEP § 2141. "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." KSR Int'l Co. v. Teleflex, Inc., 550 U.S. __, __, 82 U.S.P.Q.2d 1385, 1396 (2007).

A. THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE CASE OF OBVIOUSNESS AGAINST INDEPENDENT CLAIM 11

Regarding claim 11, the Examiner asserts that the Nissan Serena comprises an independent rear suspension and mountings

therefor and Anderson discloses lowering a floorpan of a vehicle to facilitate ingress and egress of a handicapped person, and thus it would have been obvious to modify the Nissan Serena in view of the disclosure of Anderson to arrive at the claimed invention. Applicant respectfully disagrees.

Independent claim 11 clearly distinguishes over the cited references which do not disclose or suggest:

A vehicle configured to allow accessibility to the vehicle, the vehicle comprising:

a chassis structure comprising an original chassis structure and an additional chassis structure mounted to the original chassis structure;

a substitute rear suspension mounted to the chassis structure in place of an original rear suspension, the original rear suspension being a rear beam axle suspension, the substitute rear suspension being an independent rear trailing arm suspension having independent rear trailing arm suspension components mounted to opposite sides of the chassis structure; and

a floorpan supported by the chassis structure, the floorpan having a lowered portion supported directly by the additional chassis structure, the lowered portion being located directly between the independent rear trailing arm suspension components and extending forwardly from a rear entrance of the vehicle.

At the outset, Applicant respectfully submits that the Office Action does not specifically address all of the limitations of independent claim 1. For example, the Office

Action does not address the recitation in claim 1 of an additional chassis structure mounted to the original chassis structure and/or a floorpan having a lowered portion supported directly by the additional chassis structure, the lowered portion being located directly between the independent rear trailing arm suspension. The above recitations were argued in the previous response, but have not been specifically addressed in the Office Action.

In contrast to claim 11, Anderson merely discloses a van provided with a replacement chassis for providing wheelchair access to a side of the vehicle, and the Serena motor vehicle is merely a vehicle fitted with multi-link rear suspension as standard.

There would have been no reasons to combine the Nissan Serena with Anderson to arrive at the claimed invention since neither the Nissan Serena nor Anderson comprise or disclose a substitute rear suspension mounted to the chassis structure as presently claimed. Indeed, even if such reasons existed, such a combination would merely result in the Nissan Serena having rear multi-link suspension and a replacement chassis as taught by Anderson for providing wheelchair access to a side of the Nissan Serena. The end result would not arrive at the claimed invention because an essential claim element, i.e., a floorpan

supported by the chassis structure, the floorpan having a lowered portion supported directly by the additional chassis structure, the lowered portion being located directly between the independent rear trailing arm suspension components and extending forwardly from a rear entrance of the vehicle, is absent from the combination. Indeed, the Nissan Serena has other structure located between its rear wheels which would prevent a modification resulting in a floorpan having a lowered portion supported directly by the additional chassis structure, the lowered portion being located directly between the independent rear trailing arm suspension components and extending forwardly from a rear entrance of the vehicle.

Further, the Office Action never addresses, much less explains, how the combination would arrive at such substitute rear suspension and floorpan. A *prima facie* case of obviousness can only be established with articulated reasons for the alleged combination that are supported by rational underpinnings. Conclusory statements are not sufficient. KSR Int'l Co. v. Teleflex, Inc., 550 U.S. ___, ___, 82 U.S.P.Q.2d 1385, 1396 (2007). Here, the rejection is improper because the Office Action fails to articulate any reasons that Serena would be combined with Anderson. The Office Action also fails to provide

any reasons that the alleged combination--even if valid--would arrive at the claimed invention.

In view of the above arguments, Applicant respectfully submits that claim 11 is allowable over Serena in view of Anderson and respectfully requests withdrawal of the rejection to independent claim 11. Should the Board maintain the rejection, it is respectfully requested that the Board address in detail the above arguments.

B. THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE CASE OF OBVIOUSNESS AGAINST CLAIM 12

Claim 12 is separately patentable because Serena in view of Anderson fails to disclose that the lowered portion of the floorpan extends forwardly from a rear entrance of the vehicle such that a wheelchair is able to be driven from the rear entrance to a driver's position to enable the occupant of the wheelchair to drive the vehicle from the wheelchair, as claimed. The rejection of claim 12 is thus improper for the reasons set forth with respect to claim 11. In addition, Serena in view of Anderson fails to disclose each and every limitation of claim 12.

C. THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE CASE OF OBVIOUSNESS AGAINST CLAIM 13

Claim 13 is separately patentable because Serena in view of Anderson fails to disclose the vehicle has wheelchair

accessibility to the rear of the vehicle through a doorway at the rear of the vehicle, as claimed. The rejection of claim 13 is thus improper for the reasons set forth with respect to claims 11. In addition, Serena in view of Anderson fails to disclose each and every limitation of claim 13.

D. THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE CASE OF OBVIOUSNESS AGAINST CLAIM 15

Claim 15 is separately patentable because Serena in view of Anderson fails to disclose the lowered portion of the floorpan is at least 760mm wide between rear wheels of the vehicle, as claimed. The rejection of claim 15 is thus improper for the reasons set forth with respect to claim 11. In addition, Serena in view of Anderson fails to disclose each and every limitation of claim 15.

E. THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE CASE OF OBVIOUSNESS AGAINST CLAIM 16

Claim 16 is separately patentable because Serena in view of Anderson fails to disclose the lowered portion of the floorpan is at least 840mm wide between rear wheels of the vehicle, as claimed. The rejection of claim 16 is thus improper for the reasons set forth with respect to claims 11. In addition, Serena in view of Anderson fails to disclose each and every limitation of claim 16.

F. THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE
CASE OF OBVIOUSNESS AGAINST CLAIM 17

Claim 17 is separately patentable because Serena in view of Anderson fails to disclose the lowered portion of the floorpan is 850mm wide between rear wheels of the vehicle, as claimed. The rejection of claim 17 is thus improper for the reasons set forth with respect to claims 11. In addition, Serena in view of Anderson fails to disclose each and every limitation of claim 17.

G. THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE
CASE OF OBVIOUSNESS AGAINST CLAIM 18

Claim 18 is separately patentable because Serena in view of Anderson fails to disclose the lowered portion of the floorpan is substantially flat, as claimed. The rejection of claim 18 is thus improper for the reasons set forth with respect to claim 11. In addition, Serena in view of Anderson fails to disclose each and every limitation of claim 18.

II. THE OBVIOUSNESS REJECTION OF CLAIMS 19-21

Claims 19-21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Serena in view of Anderson and further in view of Hall.

A. THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE
CASE OF OBVIOUSNESS AGAINST CLAIM 19

It is respectfully submitted that the aforementioned obviousness rejection of claim 19 has become moot in view of the deficiencies of the primary references (i.e., Serena and Anderson) as discussed above with respect to independent claim 11. That is, claim 19 is dependent upon independent claim 11 and thus inherently incorporate all of the limitations of independent claim 11. Also, the secondary reference (i.e., Hall) fails to disclose, or even suggest, the deficiencies of the primary references as discussed above with respect to independent claim 11. Indeed, the Examiner does not even assert such. Thus, the combination of the secondary reference with the primary references also fails to disclose, or even suggest, the deficiencies of the primary references as discussed above with respect to independent claim 11. Accordingly, claim 19 should be allowable over the combination of the secondary reference with the primary references at least by virtue of their dependency on independent claim 11. Moreover, claim 19 recites additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination. For example, claim 19 recites that the vehicle is provided with a restraining belt, the restraining belt being anchored to the vehicle at either side of a space in which a wheelchair is to be

located during driving of the vehicle, for restraining the occupant of the wheelchair. Serena in view of Anderson and further in view of Hall fail to disclose or even suggest such claimed features.

In view of the foregoing, it is respectfully requested that the aforementioned obviousness rejection of claim 19 be withdrawn.

B. THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE CASE OF OBVIOUSNESS AGAINST CLAIM 20

Claim 20 is separately patentable because Serena in view of Anderson and further in view of Hall fails to disclose that the belt is anchored to the vehicle on one side of the space in which the wheelchair is to be located during driving of the vehicle, by way of a belt mounting frame fixed to the structure of the vehicle, as claimed. The rejection of claim 20 is thus improper for the reasons set forth with respect to claims 11 and 19. In addition, Serena in view of Anderson in view of Hall fails to disclose each and every limitation of claim 20.

C. THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE CASE OF OBVIOUSNESS AGAINST CLAIM 21

It is respectfully submitted that the aforementioned obviousness rejection of claim 21 has become moot in view of the deficiencies of the primary references (i.e., Serena and Anderson) as discussed above with respect to independent claim

11. That is, claim 21 is dependent upon independent claim 11 and thus inherently incorporate all of the limitations of independent claim 11. Also, the secondary reference (i.e., Hall) fails to disclose, or even suggest, the deficiencies of the primary references as discussed above with respect to independent claim 11. Indeed, the Examiner does not even assert such. Thus, the combination of the secondary reference with the primary references also fails to disclose, or even suggest, the deficiencies of the primary references as discussed above with respect to independent claim 11. Accordingly, claim 21 should be allowable over the combination of the secondary reference with the primary references at least by virtue of their dependency on independent claim 11. Moreover, claim 21 recites additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination.

For example, claim 21 recites that the vehicle is provided with locking restraints for locking a wheelchair in place during driving of the vehicle. Serena in view of Anderson and further in view of Hall fail to disclose or even suggest such claimed features.

In view of the foregoing, it is respectfully requested that the aforementioned obviousness rejection of claim 21 be withdrawn.

III. THE OBVIOUSNESS REJECTION OF CLAIMS 34-38

Claims 34-38 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Serena in view of Anderson and further in view of Alatalo.

A. THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE CASE OF OBVIOUSNESS AGAINST CLAIM 34

It is respectfully submitted that the aforementioned obviousness rejection to claim 34 has become moot in view of the deficiencies of the primary references (i.e., Serena and Anderson) as discussed above with respect to independent claim 11. That is, claim 34 is dependent upon independent claim 11 and thus inherently incorporate all of the limitations of independent claim 11. Also, the secondary reference (i.e., Hall) fails to disclose, or even suggest, the deficiencies of the primary references as discussed above with respect to independent claim 11. Indeed, the Examiner does not even assert such. Thus, the combination of the secondary reference with the primary references also fails to disclose, or even suggest, the deficiencies of the primary references as discussed above with respect to independent claim 11. Accordingly, claim 34 should be allowable over the combination of the secondary reference with the primary references at least by virtue of their dependency on independent claim 11.

Moreover, claim 34 recites additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination. For instance, Alatalo fails to teach or suggest an *independent rear trailing arm suspension component comprising an elongated arm having a pivotal coupling at a front end thereof for enabling the elongated arm to pivot with respect to the chassis structure of the vehicle about an axis substantially transverse to a longitudinal axis of the elongated arm.* The final Office Action (at page 5) merely states that Alatalo discloses a "trailing arm." The final Office Action fails to point out how Alatalo allegedly teaches or suggest recitations of claim 34 and/or where those alleged teachings or suggestions are found in Alatalo. Applicant respectfully submits that these teachings are not found in Alatao and that the pending rejection is therefore improper.

In view of the foregoing, it is respectfully requested that the aforementioned obviousness rejection of claim 34 be withdrawn.

B. THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE CASE OF OBVIOUSNESS AGAINST Claim 35

Claim 35 is separately patentable because Serena in view of Anderson in view of Alatalo fails to disclose that the pivotal coupling comprises a bearing arrangement at the front end of the

elongated arm, as claimed. The rejection of claim 35 is thus improper for the reasons set forth with respect to claims 11 and 34. In addition, Serena in view of Anderson in view of Alatalo fails to disclose each and every limitation of claim 35.

C. THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE CASE OF OBVIOUSNESS AGAINST Claim 36

Claim 36 is separately patentable because Serena in view of Anderson in view of Alatalo fails to disclose that the shock absorber mounting comprises a shock absorber mounting bracket at a rear end of the elongated arm, as claimed. The rejection of claim 36 is thus improper for the reasons set forth with respect to claims 11 and 34. In addition, Serena in view of Anderson in view of Alatalo fails to disclose each and every limitation of claim 36.

D. THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE CASE OF OBVIOUSNESS AGAINST Claim 37

Claim 37 is separately patentable because Serena in view of Anderson in view of Alatalo fails to disclose that the spring comprises one of a coil spring and an air spring, and wherein the spring mounting comprises a seating in an upper surface of the elongated arm for receiving a lower end of the one of the coil spring and the air spring, as claimed. The rejection of claim 37 is thus improper for the reasons set forth with respect

to claims 11 and 34. In addition, Serena in view of Anderson in view of Alatalo fails to disclose each and every limitation of claim 37.

E. THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE CASE OF OBVIOUSNESS AGAINST Claim 38

Claim 38 is separately patentable because Serena in view of Anderson in view of Alatalo fails to disclose that the wheel mounting comprises a wheel mounting bracket mounted to an outer side of the elongated arm, as claimed. The rejection of claim 38 is thus improper for the reasons set forth with respect to claims 11 and 34. In addition, Serena in view of Anderson in view of Alatalo fails to disclose each and every limitation of claim 38.

CONCLUSION

In view of the foregoing, Appellant respectfully submits that the Examiner has failed to establish a prima facie case of anticipation or obviousness against the rejected claims. Thus, Appellant respectfully submits that the final rejection of claims 11-13, 15-21 and 34-38 is improper and the reversal of same is clearly in order and respectfully requested.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 50-0206, and please credit any excess fees to such deposit account.

Respectfully submitted,

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Date: May 13, 2009

CLAIMS APPENDIX

1-10 (Cancelled).

11 (Previously Presented). A vehicle configured to allow accessibility to the vehicle, the vehicle comprising:

a chassis structure comprising an original chassis structure and an additional chassis structure mounted to the original chassis structure;

a substitute rear suspension mounted to the chassis structure in place of an original rear suspension, the original rear suspension being a rear beam axle suspension, the substitute rear suspension being an independent rear trailing arm suspension having independent rear trailing arm suspension components mounted to opposite sides of the chassis structure; and

a floorpan supported by the chassis structure, the floorpan having a lowered portion supported directly by the additional chassis structure, the lowered portion being located directly between the independent rear trailing arm suspension components and extending forwardly from a rear entrance of the vehicle.

12 (Previously Presently). The vehicle as claimed in claim 11, wherein the lowered portion of the floorpan extends forwardly

from a rear entrance of the vehicle such that a wheelchair is able to be driven from the rear entrance to a driver's position to enable the occupant of the wheelchair to drive the vehicle from the wheelchair.

13 (Previously Presented). The vehicle as claimed in claim 11, wherein the vehicle has wheelchair accessibility to the rear of the vehicle through a doorway at the rear of the vehicle.

14 (Cancelled).

15 (Previously Presented). The vehicle as claimed in claim 11, wherein the lowered portion of the floorpan is at least 760mm wide between rear wheels of the vehicle.

16 (Previously Presented). The vehicle as claimed in claim 15, wherein the lowered portion of the floorpan is at least 840mm wide between rear wheels of the vehicle.

17 (Previously Presented). The vehicle as claimed in claim 16, wherein the lowered portion of the floorpan is 850mm wide between rear wheels of the vehicle.

18 (Previously Presented). The vehicle as claimed in claim 11, wherein the lowered portion of the floorpan is substantially flat.

19 (Previously Presented). The vehicle as claimed in claim 11, wherein the vehicle is provided with a restraining belt, the restraining belt being anchored to the vehicle at either side of a space in which a wheelchair is to be located during driving of the vehicle, for restraining the occupant of the wheelchair.

20 (Previously Presented). The vehicle as claimed in claim 19, wherein the belt is anchored to the vehicle on one side of the space in which the wheelchair is to be located during driving of the vehicle, by way of a belt mounting frame fixed to the structure of the vehicle.

21 (Previously Presented). The vehicle as claimed in claim 11, wherein the vehicle is provided with locking restraints for locking a wheelchair in place during driving of the vehicle.

22-33 (Cancelled).

34 (Previously Presented). The vehicle as claimed in claim 11,

wherein the substitute rear suspension includes:

an independent rear trailing arm suspension component comprising an elongated arm having a pivotal coupling at a front end thereof for enabling the elongated arm to pivot with respect to the chassis structure of the vehicle about an axis substantially transverse to a longitudinal axis of the elongated arm;

a wheel mounting for mounting a wheel of the vehicle longitudinally spaced from an axis of rotation of the elongated arm;

a spring mounting for mounting a spring between the elongated arm and the chassis structure of the vehicle; and

a shock absorber mounting for mounting a shock absorber between the elongated arm and the chassis structure of the vehicle.

35 (Previously Presented). The vehicle as claimed in claim 34, wherein the pivotal coupling comprises a bearing arrangement at the front end of the elongated arm.

36 (Previously Presented). The vehicle as claimed in claim 34, wherein the shock absorber mounting comprises a shock absorber mounting bracket at a rear end of the elongated arm.

37 (Previously Presented). The vehicle as claimed in claim 34, wherein the spring comprises one of a coil spring and an air spring, and wherein the spring mounting comprises a seating in an upper surface of the elongated arm for receiving a lower end of the one of the coil spring and the air spring.

38 (Previously Presented). The vehicle as claimed in claim 34, wherein the wheel mounting comprises a wheel mounting bracket mounted to an outer side of the elongated arm.

EVIDENCE APPENDIX

[NONE]

RELATED PLEADINGS APPENDIX

[NONE]